IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

MFA.No. 146 of 2001(C)

OPMV.1194/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

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APPELLANT: PETITIONER

MR.IBRAHIMKUTTY, S/O.T.P.ABDULKHADER,
HEAVEN'S COTTAGE,
VANDANAM P.O., ALAPPUZHA.

BY ADV. SRI.P.VIJAYARAGHAVAN

RESPONDENTS: RESPONDENTS
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1. **SMT.GIRIJA, W/O.RAMESHKUMAR,**
   THAYYIL HOUSE, PULAYANVAZHI,
   ERAVUKAD WARD, ALAPPUZHA.

2. **SYAMJI RAMESH (MINOR),**
   RESIDING AT THAYYIL HOUSE,
   PULAYANVAZHI , ERAVUKAD WARD,
   ALAPPUZHA.

3. **SANKARA NARAYANA PILLAI,**
   S/O.K.G.CHELLAPPAN PILLAI,
   MAHESH BHAVAN, KAMANA AMBALAPPUZHA.

**4. THE MANAGER, NEW INDIA,
ASSURANCE CO.LTD., P.B.NO.74,
M.O.WARD ALAPPUZHA.**

(SINCE THE 2ND APPELLANT IS A MINOR HE IS BEING REPRESENTED IN THESE PROCEEDINGS BY HIS MOTHER THE IST APPELLANT WHO IS THE NATURAL AND LEGAL GUARDIAN OF HER MINOR SON.)

**BY ADV. SRI.M.V.IBRAHIMKUTTY
SRI.THOMAS MATHEW NELLIMOOTTIL**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, ALONG WITH MFA NO. 148 OF 2001 MFA NO. 149 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. Nos.146, 148 & 149 of 2001

Dated this the 4th day of July, 2007

Judgment

Koshy, J.

These appeals are filed by the same appellant from a common order of the Motor Accidents Claims Tribunal, Alappuzha in O.P. (M.V.) Nos. 431, 430 and 1194 of 1993. Appellant, a police constable, is the owner of motor bike having registration No. KL-4/5505. While riding the above motor bike on 25.9.1992 through National Highway, it hit against the scooter bearing registration No. KRA 9479. Due to the injuries suffered in the accident, rider of the scooter died and pillion rider of scooter suffered serious injuries. Appellant also suffered injuries on his face. Legal representatives of the rider of the scooter (wife and three minor children) filed O.P. (M.V.)No.431 of 1993. Pillion rider of the scooter filed O.P. (M.V.) No.430 of 1993 and appellant filed O.P.(M.V.) No.1194 of 1993 claiming compensation. The incident occurred on a bundh day. Unfortunately, the appellant was not having any insurance policy. He failed to take any mandatory

statutory policy even though he was a police constable. Tribunal found that the accident occurred due to the sole negligence of the appellant. Hence, compensation awarded to the legal representatives of the rider of scooter and pillion rider was directed to be deposited by the appellant. In his claim petition, though tribunal calculated compensation, no amount was awarded to him as the accident occurred due to his own negligence. Finding of negligence and quantum of compensation awarded in all the three cases are questioned by the appellant.

2. With regard to the finding of negligence, tribunal mainly relied on the scene mahazar and documentary evidence and evidence of PW1. PW1 was the pillion rider of the scooter who was the claimant in O.P.No.430 of 1993. He deposed that the scooter was riding in the correct side slowly and carefully. They were going from south to north direction on the western side of the road. The motor cycle coming from north to south direction in a rash and negligent manner hit the scooter as a result he and rider of the scooter fell down. They were taken to Medical College Hospital. Later, rider of the scooter died. According to RW1, appellant, he was riding the motor cycle KL-4/5505 from

north to south carrying one Aliyarknju on the pillion of it and when the motor cycle reached the place of occurrence, two cyclists were coming from opposite direction and at that time deceased Ramesh Kumar sweared his scooter towards east for overtaking the cyclists. In order to avoid hit from the scooter, he turned the motor cycle to rightwards and by that time the scooter hit on the motor cycle. He says that the accident occurred on the eastern half of the road. According to him, the persons assembled there shifted the vehicles and injured persons to the western side. RW2 is the person alleged to have shown the place of occurrence to the police to prepare scene mahazar. According to him, he has not seen the accident and not shown the place of accident. In cross-examination, it has come out in evidence that the accident took place in front of his shop and his house is attached with the shop. He also stated that the distance between his shop-cum-residence and place of occurrence is 10 ft. Tribunal rightly disbelieved his version as there is no need for the police to mention his name as the person who showed the place of occurrence. Since it was a bundh day, though shop was closed, since he was residing within 10 feet from the place of incident,

naturally, he would have gone to the place of incident. Admittedly, large number of people gathered there. There is no case for him that he was not in station on that day. RW3 is one Aliyarkunju, alleged pillion rider of the motor cycle. He described the incident as stated by the appellant. Though he claimed to be the pillion rider of the appellant, he suffered no injuries. Tribunal did not accept his evidence as he is interested and a close neighbour of the appellant going to the same mosque etc. RW4 was examined by the appellant as an eye witness. According to him, at the time of accident, he was riding a bicycle to his house from Ambalapuzha to Vandanam. He stated that he saw the accident from a distance of 300 mtr. According to him, the motor cycle was coming from north to south through the eastern side of the road and the scooter came from opposite direction and hit on the motor cycle. He also stated that two or three cyclists came in front of the scooter. According to him, the accident has occurred on the eastern side of the road. He further stated that RW1 was lying under the motor cycle and the persons assembled there removed the motor cycle for taking him. In cross-examination, he stated that police has not recorded his statement. He admitted

that he and Ibrahimkutty belong to the same place. He also stated that the accident happened five minutes after the passing of the motor cycle from him. The tribunal rightly did not believe his version for the following reasons:

> "The version of this witness that the motor cycle passed him five minutes before the accident, the chance of this witness to see the accident is remote. So, no reliance could be given to the testimony of this witness."

F.I.R. (Ext.A1) was registered against the appellant. Ext.A2 is the scene mahazar. As per Ext.A2 scene mahazar, the place of occurrence is 1.25 metres east from the western tar end of the road. The distance from the scene of occurrence to the eastern tar end of the road is 5.75 mtrs. So the total width of the road is 7 mtrs. The road was a straight road with enough width. The road was not having vehicular service on the day as it was a bundh day. Only two wheelers were allowed to drive on that day. Even if the scooter was overtaking one or two cycles, it has no chance to go to eastern portion or even the middle line of the road. If appellant was driving in the eastern portion of the road, accident

would not have happened on his right side. Even if the story put forward by the appellant and his alleged pillion rider, RW2, is accepted, that people gathered there removed the motor bike and scooter to the western end of the road, there is no possibility that accident occurred on the eastern portion of the road. People will remove the vehicle only to the nearest road end. The fact that motor cycle and scooter were lying on the western side of the road is admitted. After investigation, police charge-sheeted the appellant by Ext.A4. He was charged for offences under sections 279, 337, 338 and 304 of the Indian Penal Code. Even it is stated that appellant was acquitted for want of sufficient evidence required in a criminal case. Appellant is a police constable. According to the tribunal, police will not take a false case against him after due investigation and appellant did not file any complaint against the police officers who registered the case. Taking all these facts, we agree with the tribunal that the accident occurred at the western part of the road in the correct side of the scooter and finding of negligence on the part of the appellant who was riding the motor cycle cannot be faulted.

3. Next question is regarding the quantum of compensation. With regard to the death of the claimants in O.P.(M.V.) No.431 of 1993 (M.F.A.No.148 of 2001), the deceased left behind his wife and a minor child apart from father and mother. He was a barber. Ext.A13 is the membership certificate of the deceased issued by the Kerala State Barbers' Association. The tribunal has taken Rs.1,500/- as the monthly income. After deducting one-third, Rs.1,000/- was taken as the loss of dependency. Appellant was aged 28 and the dependency compensation awarded was Rs.2,16,000/-. We are of the view that just and reasonable compensation was awarded. Total compensation awarded including loss of consortium etc. is Rs.2,25,500/-.

4. In M.F.A.No.149 of 2001 filed by the pillion rider of the scooter, he suffered very serious injuries. He was working as a mechanic in Kerala State Road Transport Corporation. Injuries suffered by him as per Ext.A5 wound certificate are fracture pelvis, contusion thigh (right) and contusion (5 x 8 c.m.) right knee, lacerated wound over right mid shin 3 x 1 c.m. in size, lacerated wound over lateral aspect of little toe (right) 1 x 0.5 c.m. skin deep, lacerated wound 1 c.m.

skin deep in between the eye brows, lacerated wound over right thigh 4 x 3 c.m. He was admitted in the Medical College Hospital, Alappuzha on 25.9.1992 and discharged on 30.10.1992. Ext.A6 shows that he had diastasis of symphysim pubis with sacro iliac subluxation (Lt), undisplaced fracture medial femeral condyle Rt. Ext.A8 is the disability certificate dated 18.10.1993 issued by Dr. C.M. Kumaran, Assistant Professor of Ortho, Medical College Hospital, Alappuzha. In Ext.A8, it is stated that the pubic symphysis of the petitioner remains separated (2.0 c.m.) and he has pain on terminal ranges of flexion and internal rotation of Rt.hip. There is tenderness over the pubic symphysis and over the left sacro iliac joint. The range of movements of his left hip are as follows: Flexion - terminal 15 degree limited, produces pain over the pubic symphysis. Internal rotation: terminal 10 degree limited, external rotation: 30 degree Abduction and adduction: full range (terminal ranges painful). Fracture of the medial femorus condyle united without deformity. There is a loose body in the Rt. knee (anterior part) and there is evidence of beginning of post traumatic de-generative arthritis of Rt.knee joint. The range of movement of his

Rt. knee is from 0 degree to 115 degree. Terminal range of flexion is painful. Fracture bass of 5th metatarsal united. There is minimal swelling of the Rt. ankle joint. The range of movements of his subtalar joint on Rt. side are as follows: Eversion-full in versin-terminal 10 degree limited painful. His permanent disability is estimated as 20%. His salary was Rs.3,428/- as per Ext.A9 salary certificate. Since he did not lose employment, tribunal did not grant compensation for the period till his retirement. However, he was out of employment for six months and six months' salary was granted for loss of earnings. Age of superannuation was 55. After the age of 55, applying 8 as the multiplier and Rs.1,500/- as the multiplicand, compensation was calculated, even though he had suffered 20% permanent disability, total compensation awarded was only Rs.76,568/-. The tribunal has awarded just and reasonable compensation.

5. With regard to the compensation calculated for the appellant in O.P. (M.V.) No.1194 of 1993, the tribunal has calculated reasonable compensation. He did not lose his job. He continued his employment also. In any event, since it was found that he himself was

negligent, a detailed examination of compensation, if payable, need not be done. We have already found that finding of negligence by the tribunal is correct on the basis of the evidence adduced and compensation awarded in O.P. (M.V.) Nos.430 and 431 of 1993 are just and reasonable. However, considering the present rate of interest, we reduce the rate of interest ordered to be paid by the tribunal from 12% to 7% per annum from the date of application till the date of payment. We also direct the tribunal to disburse Rs.25,000/- each already deposited by the appellant in M.F.A.No.148 and in M.F.A. No.149 of 2001 to the respective claimants at the earliest if the amount is not disbursed already. Appeals are disposed of accordingly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.Nos.146, 148 & 149/2001

JUDGMENT

Dated:4th July, 2007